

REMARKS

The present Amendment is in response to the Examiner's Office Action mailed 23 April, 2007. No claims have been amended and claims 1-22 remain pending. The Examiner's indication of allowable subject matter in claims 16 and 22 is appreciated.

Reconsideration of the application is respectfully requested in view of the following remarks. For the convenience and reference of the Examiner, the remarks of the Applicants are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

Applicants note that the remarks and amendments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, and amendments are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicants, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner, and/or the merits of additional or alternative arguments.

II. Claim Rejections Under 35 U.S.C. § 102

Applicants respectfully note that a claim is anticipated under 35 U.S.C. § 102(b) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as

complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. Manual of Patent Examining Procedure § 2131.

The Examiner has rejected claims 1-15 and 17-21 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,850,388 to Anderson et al. (“*Anderson*”). Applicants respectfully disagree.

a. claims 1-9

Claim 1 recites a method comprising, among other things: “...determining a network device topology from a first processing of the data trace; [and] building user layer protocols using a second processing of the data trace and the determined device topology...” The Examiner has alleged that *Anderson* discloses the aforementioned limitations. However, the Examiner’s allegation is based on a logical impossibility.

In particular, the Examiner alleged, on the one hand, that “Anderson et al. disclose determining station-level statistics by analyzing source and destination addresses in the packet (determining a network topology from a first processing of the data trace).” See *Office Action*, p. 3 (citing *Anderson* at col. 11, ll. 5-17). Hence, according to the Examiner, the “statistics” of *Anderson* correspond to the claimed “device topology.” However, the Examiner then alleged that these same statistics are computed “using...the determined device topology [i.e., the statistics].” See *Office Action*, p. 3 (citing *Anderson* at col. 10, ll. 60-65 and col. 11, ll. 1-17) (emphasis added). Thus, the statistics of *Anderson* are alleged to have been computed using themselves. Such circular computation is logically impossible.

Moreover, the Examiner relied on a column 4 passage of *Anderson*, which describes identification and analysis of “protocol portions” of data packets, as allegedly disclosing “building user layer protocols.” See *Office Action*, p. 3 (citing *Anderson* at col. 4, ll. 62-63). However, the Examiner did not even assert that the “user layer protocols” are built “using a second processing of the data trace and the determined device topology,” as recited in claim 1. Instead, the Examiner asserted that the statistics—described in columns 10 and 11 of *Anderson*—are computed using a second processing and the determined device topology. See *id.* Thus, even if these assertions are accurate, which Applicants do not concede, they are not relevant to what is actually recited in the claim.

In light of the foregoing, Applicants respectfully submit that the Examiner has failed to establish that *Anderson* anticipates claim 1, at least because the Examiner has not established that each and every element as set forth in claim 1 is found in *Anderson*, because the Examiner has not established that the identical invention is shown in as complete detail in *Anderson* as is contained in claim 1, and because the Examiner has not shown that *Anderson* discloses the elements arranged as required by claim 1. Applicants thus respectfully submit that the rejection of claim 1, as well as the rejection of corresponding dependent claims 2-9, should be withdrawn.

b. claims 10-16

Similar to claim 1, claim 10 requires “determining a topology of the data network via analysis of a combination of the plurality of data traces; [and] processing the combination of the plurality of data traces in conjunction with the determined topology to rebuild user layer protocols...” The Examiner has again based the rejection on illogical reasoning. In particular, the Examiner alleged a correspondence between determining “statistics” and “determining a topology,” while also alleging that the statistics are computed by “processing...data traces in conjunction with the determined topology [i.e., the statistics].” *See Office Action*, p. 6 (“...Anderson et al. disclose computing statistics ...(processing...data traces in conjunction with the determined topology....”). The statistics cannot logically be computed by processing data in conjunction with the statistics themselves.

Moreover, the Examiner again relied on a passage in column 4 of *Anderson*, which describes identification and analysis of “protocol portions” of data packets, as allegedly disclosing “building user layer protocols.” *See Office Action*, p. 6 (citing *Anderson* at col. 4, ll. 62-63). However, the Examiner did not even assert that “processing the combination of the plurality of data traces in conjunction with the determined topology” is done “to rebuild user layer protocols,” as recited in claim 10. Instead, the Examiner asserted that the processing is done to compute the statistics described in columns 10 and 11 of *Anderson*. *See id.* Thus, even if these assertions are accurate, which Applicants do not concede, they are not relevant to what is actually recited in the claim.

In light of the foregoing, Applicant respectfully submits that the Examiner has failed to establish that *Anderson* anticipates claim 10, at least because the Examiner has not established that each and every element as set forth in claim 10 is found in *Anderson*, because the Examiner

has not established that the identical invention is shown in as complete detail in *Anderson* as is contained in claim 10, and because the Examiner has not shown that *Anderson* discloses the elements arranged as required by claim 10. Applicant thus respectfully submits that the rejection of claim 10, as well as the rejection of corresponding dependent claims 11-16, should be withdrawn.

c. claims 17-22

Claim 17 requires "...analyzing the bidirectional data to extrapolate information indicative of network topology; analyzing individual data samples from the data trace using the network topology to rebuild user layer protocols for the individual data samples..." As in the cases of claims 1 and 10, the Examiner has again relied on illogical reasoning as a basis for the claim rejection. For example, the Examiner alleged a correspondence between "statistics" and "a network topology," while also alleging that the statistics are computed "using the network topology [i.e., the statistics]." See *Office Action*, p. 9 ("...Anderson et al. disclose computing statistics...(analyzing individual data samples from the data trace using the network topology....)"). The statistics cannot logically be computed using the statistics themselves.

Moreover, the Examiner again relied on a passage in column 4 of *Anderson*, which describes identification and analysis of "protocol portions" of data packets, as allegedly disclosing "building user layer protocols." See *Office Action*, p. 9 (citing *Anderson* at col. 4, ll. 62-63). However, the Examiner did not even assert that "analyzing individual data samples from the data trace using the network topology" is done "to rebuild user layer protocols," as recited in claim 17. Instead, the Examiner asserted that the analyzing is done to compute the statistics described in columns 10 and 11 of *Anderson*. See *id.* Thus, even if these assertions are accurate, which Applicants do not concede, they are not relevant to what is actually recited in the claim.

In light of the foregoing, Applicant respectfully submits that the Examiner has failed to establish that *Anderson* anticipates claim 17, at least because the Examiner has not established that each and every element as set forth in claim 17 is found in *Anderson*, because the Examiner has not established that the identical invention is shown in as complete detail in *Anderson* as is contained in claim 17, and because the Examiner has not shown that *Anderson* discloses the elements arranged as required by claim 17. Applicant thus respectfully submits that the rejection

of claim 17, as well as the rejection of corresponding dependent claims 18-22, should be withdrawn.

CONCLUSION

In view of the discussion and amendments submitted herein, Applicants respectfully submit that each of the pending claims 1-22 is now in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 9th day of October, 2007.

Respectfully submitted,

/Ronald J. Ward/ Reg No. 54,870

RONALD J. WARD
Registration No. 54,870
Attorney for Applicants
Customer No. 022913
Telephone: (801) 533-9800